

BEFORE THE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Claims for Refund
Under the Sales and Use Tax Law of:

Rhodia, Inc.
Case ID's 60469 and 78672

Appearances:

For Claimant:

Joseph Vinatieri, attorney

William Vande Wetering, CPA

Thomas Benner, product manager, Rhodia, Inc.

For Sales and Use Tax Department:

Sharon Jarvis, Supervising Tax Counsel

For Appeals Section:

John Abbott, Tax Counsel IV

MEMORANDUM OPINION

Claimant filed two claims for refund for amounts paid on sales and use tax returns on its transactions with its customers for regenerating spent sulfuric acid. The Sales and Use Tax Department acknowledged the two claims for the periods April 1, 1998 through March 31, 2000.

Claimant's customers are petroleum refiners. Over time, the refiners' fresh sulfuric acid used in their refinery operations becomes contaminated or spent and no longer serves its intended purpose. When this occurs, the refiners transport the spent acid, containing approximately 90 percent sulfuric acid, from their refineries to claimant. At its facilities in California, claimant commingles the spent acid with spent acid from other refiners. The refiners retain title to their spent acid, and claimant does not use deficiency accounts or credit accounts. When claimant receives spent acid, it also provides the refiners with other fresh or regenerated sulfuric acid, so that the refiners have sulfuric acid continuously available for use in their refinery operations. The refiners and claimant repeat this process approximately every two days.

Claimant's regeneration process includes: heating the spent sulfuric acid to a gaseous form; breaking it down to sulfur dioxide (a non-acid), carbon dioxide, and water; removing contaminants; and replenishing the product with fresh sulfur derivatives. Claimant buys the fresh sulfur derivatives tax-paid.

Claimant contends that its regeneration of spent sulfuric acid is a nontaxable repair or reconditioning service pursuant to California Code of Regulations, title 18, section 1546. Claimant's services refit the sulfuric acid for the same use by the refiners for which it was originally produced. Claimant does not make any ultimate change in the sulfuric acid and uses only the same types of chemical components as originally in the sulfuric acid.

The Department contends the process is a salvage and manufacture process, for the fabrication of a new product subject to tax. The Department argues that after claimant removes the contaminants, it uses the recovered sulfur dioxide as a raw material, together with the sulfur derivatives it purchased and other chemical components, to make new sulfuric acid. Alternatively, the Department contends that even if claimant's process were a repair or reconditioning operation rather than a fabrication of a new product, tax would nevertheless apply to claimant's transactions

with the refiners. The transactions would constitute a taxable exchange of used for reconditioned similar property, pursuant to section 1546, paragraph (b)(4).

OPINION

We find that the outcome in this matter is controlled by section 1546. As relevant to this opinion, section 1546 provides in part:

“(b) [¶].... [¶] (4) EXCHANGE OF USED FOR RECONDITIONED SIMILAR PROPERTY. If the method of repairing or reconditioning certain tangible personal property involves commingling property delivered to a repairman or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the repairman or reconditioner but which is exactly the same kind of property or derived from exactly the same kind of property as that so delivered, tax applies to the amount charged by the repairman or reconditioner for the repaired or reconditioned property.”

We conclude that claimant's transactions do not constitute the fabrication of a new product. Claimant received contaminated sulfuric acid, removed the impurities, added tax-paid sulfur derivatives, and returned to the refiners regenerated sulfuric acid, unchanged in its chemical composition. The process described above is more analogous to repair than fabrication, despite the fact that claimant reduced the sulfuric acid to its chemical components, since the purpose was solely to remove the impurities.

However, the transactions are taxable as exchanged reconditioned property under section 1546, paragraph (b)(4). Claimant commingles spent sulfuric acid from different refiners and also provides them with fresh sulfuric acid from previously commingled resources. Because of this commingling, it is irrelevant that the refiners may have attempted to retain title to their spent acid. Deny the claims for refund.

Adopted at Sacramento, California, on May 30, 2002.

John Chiang_____, Chair

Johan Klehs_____, Member

Dean Andal_____, Member

Claude Parrish_____, Member